

Inquiry into the Family Law Amendment (Information Sharing) Bill 2023

26 May 2023

Acknowledgement

WLSA members operate from many different locations across Australia. Across these locations, we acknowledge the Traditional Owners of Country, recognise their continuing connection to land, water and community, and pay respect to Elders past and present.

We acknowledge the family and domestic violence victim-survivors with whom we work and whose voices and experiences inform our advocacy in the hope for positive change.

Who we are

Women's Legal Services Australia (**WLSA**) is a national network of 13 specialist Women's Legal Services in each State and Territory across Australia, specifically designed to improve women's lives through gender-led and trauma-informed specialist legal representation, support, and advocacy.

WLSA members include:

- Women's Legal Service Victoria
- Women's Legal Service Tasmania
- Women's Legal Service NSW
- Women's Legal Service WA
- Women's Legal Service SA
- Women's Legal Service Queensland
- North Queensland Women's Legal Service
- First Nations Women's Legal Service Queensland
- Women's Legal Centre ACT
- Wirringa Baiya Aboriginal Women's Legal Centre (NSW)
- Top End Women's Legal Service
- Central Australian Women's Legal Service
- Katherine Women's Information and Legal Service

What we do

WLSA members provide high quality free legal services, including representation and law reform activities, to support women's safety, access to rights and entitlements, and gender equality. We seek to promote a legal system that is safe, supportive, non-discriminatory, and responsive to the needs of women. Some of our services have operated for almost 40 years.

The principal areas of law that our members assist with are family law, family violence intervention orders, child protection, migration law, victims of crime compensation, employment law and discrimination law. Some of our members also assist with other areas of civil law and criminal law. Our members also develop and deliver training programs and educational workshops to share our expertise regarding effective legal responses to violence and relationship breakdown.

The majority of our members' clients have experienced, or are still experiencing, family and domestic violence. WLSA members have specialist expertise in safety and risk management, maintaining a holistic and trauma-informed legal practice, providing women additional multidisciplinary supports, including social workers, financial counsellors, and trauma counsellors, for long-term safety outcomes.

WLSA members approach the legal issues facing women and their experience of the legal system within a broader analysis of systemic gender inequality. We are committed to providing individual services whilst also working towards deeper legal and cultural change to redress power imbalances and address violence and gender inequality. We contribute to policy development and law reform to ensure that the law does not unfairly impact on women experiencing violence and relationship breakdown.

Contact us

For further information, please contact:

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Endorsements

The organisations below endorse this submission.

1. Australian Women Against Violence Alliance (AWAVA)
2. Central Coast Community Legal Centre
3. Central Tablelands and Blue Mountains Community Legal Centre
4. Centre for Women's Safety and Wellbeing
5. Domestic Violence NSW
6. Full Stop Australia
7. InTouch Multicultural Centre Against Family Violence
8. National Aboriginal & Torres Strait Islander Women's Alliance
9. National Rural Women's Coalition
10. Older Women's Network NSW
11. WESNET
12. Western Women's Legal Support
13. Western NSW Community Legal Centre
14. Women's Health NSW

Introduction and summary of recommendations

1. WLSA welcomes the opportunity to comment on the Family Law Amendment (Information Sharing) Bill 2023 (**the Bill**).
2. WLSA acknowledges the benefits of and supports restricted information sharing in relation to family law, family violence (including about firearms) and child protection that has as its paramount principle the best interests of the child.
3. We support the use of orders for information sharing agencies to provide particulars and or documents or information relating to family violence and child abuse which may be issued at any time during proceedings and may be issued to the same information sharing agency multiple times in proceedings, for example, to ensure the court has current material on which to make decisions.
4. While supporting an information sharing framework, it is vital that necessary safety measures are in place to ensure the safety of adult survivors, who are predominantly women, and children.
5. The Family Law Amendment (Information Sharing Bill) must be strengthened through using stronger language in relation to safety in the Bill itself.
6. The safety measures are primarily included as safeguards in the Regulations. We support their inclusion in the Regulations to ensure they can be updated based on current best practice in a timely way. However, the Regulations are being drafted and are not currently available for comment.
7. We are concerned that there has been no proper consultation process on the Regulations. This is problematic because the Regulations will contain the safeguards that will be vital for protecting the safety of women and children.
8. Given the safeguards are vital for the success of the information-sharing scheme we believe it is important to be able to review the Regulations prior to the passing of the legislation to ensure the necessary safeguards are in place.
9. The *“information sharing agencies”* are also to be prescribed in the Regulations which are yet to be provided for comment.
10. It is important that information sharing schemes are not seen as the panacea. Information sharing schemes will not solve systemic problems such as delays or inexperience in responding to family violence. Further, there is a risk that agencies may not act on risk if they assume another agency with access to the information sharing system will now be responsible.
11. It is vital there be extensive, regular and ongoing training in domestic, family and sexual violence for everyone involved in the information-sharing scheme, including those making and using the records.
12. In summary we recommend:
 - i. Strengthen language in the Family Law Amendment (Information Sharing) Bill 2023 to require considerations of safety and, where relevant, action to ensure safety.
 - ii. Ensure opportunities to comment on the Regulations relating to information-sharing prior to the passing of the Bill, including in relation to safeguards and prescribed information sharing agencies.

In the alternative and less preferred, that there be sufficient opportunity to comment on the Regulations relating to information-sharing prior to the commencement of the Bill.
 - iii. There be an ongoing statutory review mechanism to ensure regular and ongoing reviews of the Family Law Amendment (Information Sharing) Bill 2023.
 - iv. Regular and ongoing training in domestic, family and sexual violence for everyone involved in the information-sharing scheme including the recognition of dynamics of domestic, family and sexual violence and unconscious bias, working with victim-survivors of domestic and family violence, response-based practice and cultural competence training.

Stronger language about safety in the Bill

Requiring action

13. If an information sharing agency produces a document or gives information or particulars “*on its own initiative*” the following safeguards are outlined at proposed s67ZBD(6) and s67ZBE(6) of the Bill.

The agency must consider

(a) redacting the document if the document contains protected material; or

(b) not providing the information or particulars to the extent that the information is, or the particulars would reveal, protected material.

14. We question if “*must consider*” is sufficient. We note the use of mandatory language “*must*”, but question if something more than “*consider*” is required. In what circumstances will action beyond “*consider*” likely occur?

Discretionary language

15. The Explanatory Memorandum recognises the “*expertise of information sharing agencies*”.¹ At proposed s67ZBG(2) the Bill enables these agencies to advise the court about any risks the court should consider when disclosing particulars, documents or information, including risk to:

(a) a party to the proceedings; or

(b) a child to whom the proceedings relate; or

(c) a person who communicated information to the agency in confidence; or

(d) any other person.

16. However, the agency is not required to disclose risk when they are aware of this. This protection is discretionary “*the agency may advise the court*”. We question if this should be more clearly mandated.

Safeguards for identifying notifier when a party to proceedings

17. There is a general rule that the identity of the notifier of family violence and/or child abuse is not disclosed. There are exceptions including at proposed s67ZBH(3) of the Bill:

(a) the notifier consents to the disclosure; or

(b) the notifier is a party to the proceedings; or

(c) the court is satisfied that the notifier’s identity, or information that could identify the notifier, is critically important to the proceedings and that failure to make the disclosure would prejudice the proper administration of justice.

18. We recognise that in some instances it may be helpful to identify the notifier when they are a party to proceedings. This may assist, for example, in identifying systems abuse, if a party repeatedly reports to police or child protection without grounds.

19. However, we are concerned that there will be insufficient safeguards in place to protect the identity of women who are victim-survivors of family violence and whose safety may be at risk if their identify as notifiers of family violence and/or child abuse is disclosed when they are a party to proceedings.

¹ House of Representatives, [Family Law Amendment \(Information Sharing\) Bill 2023 Explanatory Memorandum](#), paragraph 13, page 9.

20. We note the definition of “*protected material*” at proposed s67ZBF(3)(c) includes
disclosure of which would
(i) endanger a person’s life or present an unreasonable risk of harm to a person;
21. It is not clear if this provision is intended to capture that scenario.
22. We note the added protection at proposed s67ZBH(4):
Before making a disclosure for the reasons set out in paragraph (3)(c), the court must:
(a) ensure that the agency is notified about the intended disclosure and given an opportunity to respond; and
(b) have regard to any advice given to the court under section 67ZBG (advice to court about risk of disclosure).
23. However, we reiterate again that information sharing agencies are not mandated to advise the court about risk of disclosure.
24. We note current s69ZW(6) of the *Family Law Act* – Evidence relating to child abuse or family violence - allows for disclosure of the notifier in limited circumstances. “*The notifier is a party to the proceedings*” is not specifically included.

Recommendation 1:

Strengthen language in the Bill to require considerations of safety, and, where relevant, action to ensure safety.

Safeguards to identify and minimise risks involved with information sharing

25. WLSA strongly recommends an evidence-based approach to developing the information sharing scheme, including further research into potential safeguards to identify and minimise the risks involved with information sharing. Ongoing monitoring and review of the effectiveness of safeguards must also be built into the scheme.
26. Safeguards should include:
- i. Clearly identifying the purpose of the scheme in the legislation.
 - ii. Framing the information sharing system as safety and agency focused and a risk management tool which is based on best practice response to family, domestic and sexual violence, trauma informed principles, and aims to be ethical, consistent, minimally intrusive, proportionate, culturally safe, and respectful of agency.
 - iii. Testing the information sharing system amongst a small group of participants first before rolling out to a larger population.
 - iv. Implementing approaches that address the needs of Aboriginal and Torres Strait Islander communities, migrant and refugee communities, people with disability, LGBTIQ+ communities and people living in regional, rural and remote areas, to be co-developed with each of these groups.
 - v. Extensive, regular, and ongoing training in domestic, family and sexual violence for all staff involved in keeping records and putting information into the shared system, including the recognition of dynamics of domestic, family and sexual violence and unconscious bias, working with victim-survivors of domestic, family and violence, and cultural competence training.

- vi. Training in response-based practice such as not concealing or mutualising family violence, holding perpetrators to account and not blaming or pathologising victim-survivors and in appropriate notetaking is essential. Given the serious risks to victim-survivors of getting this wrong, staff must have the appropriate skills to analyse the information regarding family violence and be able to correctly identify the person most in need of protection and the predominant aggressor.
- vii. Clear protocols around who can access information and the roles and responsibilities of different agencies.
- viii. If there is to be a database that each of the Courts can access, issues of timeliness and currency of data should be considered. For example, it would need to be made clear to users that it should not be assumed that a lack of relevant information on a database necessarily reflects the latest circumstances.

Proposed safeguards

27. Proposed s67ZBI of the Bill is titled *Information sharing agencies and court must have regard to information sharing safeguards*. This provision notes safeguards will be prescribed in the Regulations.

28. The Explanatory Memorandum states:

....The safeguards are intended to ensure information shared is collected, used, disclosed, accessed and stored in an appropriate manner. The safeguards to be prescribed by the Regulations may include items to ensure:

- a. information is only requested, ordered, and shared to the extent necessary to identify, assess, manage and respond to family violence, child abuse and neglect risk;*
- b. information sharing is conducted in good faith, avoiding conflicts of interest and with reasonable care to the safety of staff, parties to proceedings and relevant third parties;*
- c. information is sent and received in a secure manner, which limits further disclosure;*
- d. reasonable steps are taken to ensure that parties who may pose, or are alleged to pose, a family safety or child abuse risk, cannot access sensitive information that may prejudice the safety of another person, whilst ensuring access to natural justice, and;*
- e. if discovered that information recorded and shared is incorrect, best efforts are made to correct the information shared, and relevant records are updated.²*

29. We support these safeguards but note they are not mandated, rather “*the Regulations may include...*”. Further, they are not currently available to comment on. The detail of these Regulations is vital to ensure adequate safeguards are in place to protect the safety of women and children.

30. We are also interested in the detail of which agencies will be prescribed “*information sharing agencies*”. The Explanatory Memorandum states:

16. Though not contained within the Bill, the types of agencies, or parts of agencies, intended to be prescribed in the Regulations are those with investigative powers and responsibilities in relation to family violence and child protection, such as State and Territory police and child protection authorities, as well as those who may hold pertinent information for the assessment and management of family violence and safety risk, such as firearms authorities.

31. We understand this to include police, statutory child protection bodies and firearm authorities, but the detail will be included in the Regulations.

² House of Representatives, [Family Law Amendment \(Information Sharing\) Bill 2023 Explanatory Memorandum](#), paragraph 21, page 5

Recommendation 2.1

Ensure opportunities to comment on the Regulations relating to information-sharing prior to the passing of the Bill, including in relation to safeguards and prescribed information sharing agencies.

Recommendation 2.2

In the alternative and less preferred, that there be sufficient opportunity to comment on the Regulations relating to information-sharing prior to the commencement of the Bill.

Regular and ongoing statutory review

32. The Bill currently provides for one statutory review of the effectiveness of the Subdivision and Regulations no later than 12 months after commencement.
33. Given the lack of consultation on the Regulations, it is important there be an ongoing statutory review mechanism so any safety risks or other unintended consequences can be addressed in a timely manner.
34. We recommend the second and further statutory reviews occur every 2 years.
35. It is also important to include a legislative timeframe from the time the review commences to the time the report is tabled in Parliament. This will ensure issues are identified and addressed in a timely manner.
36. Proposed s67ZBL states that

Copies of the report must be tabled in each House of the Parliament within 15 sitting days of that House after the completion of the report.

There is no timeframe specified for the conduct of the review.

37. We recommend a period of 12 months be legislated to conduct the review and report to Parliament.

Regular and ongoing training

38. It is vital there be extensive, regular and ongoing training in domestic, family and sexual violence for everyone involved in the information-sharing scheme, including those making and using the records.
39. This must include:
 - i. Regular and ongoing training in domestic, family and sexual violence including the recognition of dynamics of domestic, family and sexual violence and unconscious bias, working with victim-survivors of domestic and family violence and cultural competence training.
 - ii. Training in response-based practice such as not concealing or mutualising family violence, holding perpetrators to account and not blaming or pathologising victim-survivors and in appropriate notetaking is essential. Given the serious risks to victim-survivors of getting this wrong, staff must have the appropriate skills to analyse the information regarding family violence and be able to correctly identify the person most in need of protection and the predominant aggressor.

Recommendation 3

Regular and ongoing training in domestic, family and sexual violence for everyone involved in the information-sharing scheme including the recognition of dynamics of domestic, family and sexual violence and unconscious bias, working with victim-survivors of domestic and family violence, response-based practice and cultural competence training.